

EPA v. Paul Sauget and Sauget and Company

EPA No. 3602A

By: Stanley S. Parsons

This case has been prepared to enforce the provisions of Pollution Control Board (PCB) Order 77-84 issued August 24, 1978. The subject of these proceedings is the Sauget Landfill located in Sauget, Illinois. PCB 77-84 ordered the respondents to place two feet of suitable cover on the entire site by February 24, 1981. This cover is to be applied in twenty percent increments for each six-month period from the date of the issuance of the Board Order, August 24, 1978, until thirty months has passed, February 24, 1981. As of August 24, 1979, by which time forty percent of the final cover was to be applied, very little or no final cover had been applied to the site. PCB 77-84 also required the posting of a \$125,000 performance bond by the respondents with the Agency to secure the application of the final cover. No such bond has been posted. The Order also required the respondents to pay a penalty of \$5,000 to the Agency in two monthly installments of \$2,500. Only one \$2,500 payment has been received by the Agency.

The information contained in the attached material from the brochure prepared for bringing PCB 77-84 is still accurate as to site description and history up to the filing of PCB 77-84. This site has been a chronic enforcement problem. It was also the subject of enforcement action in PCB 71-29 where these same respondents were penalized \$1,000 for operational violations.

Inspections since the Board Order of August 24, 1978, have found no progress toward the application of final cover. (A large mound of cover material on the site has not been spread onto the site.) By August 24, 1979, forty percent of the final cover should have been applied, and the respondents have not made a showing as provided in the settlement of an Act of God or other situation of unforeseen circumstances or impossibility which has prevented the application of final cover. As mentioned previously, Agency records show that the \$125,000 performance bond has not been posted, and only \$2,500 of the \$5,000 penalty has been paid. There is no indication that increased progress will be made in applying final cover in accord with the Board's schedule, that the performance bond will ever be posted, or that the other half of the \$5,000 penalty will be paid.

The financial condition of the respondents is unknown to the Agency. Sauget and Company, a Delaware corporation, has not been authorized to do business in Illinois since the revocation of their authority to do business in Illinois by the Secretary of State November 15, 1973. The current address of Paul Sauget and Sauget and Company is:

2902 Monsanto Avenue
Sauget, Illinois 62206

Recent inspections of this site have shown current operational violations at the site with random dumping and an underground fire currently occurring. These violations will be the subject of a new Pollution Control Board action against these respondents and the current landowners Eagle Marine Industries of St. Louis in EPA Enforcement Case No. 3602B.

Inspection Dates

1. December 28, 1978 -- Inspection of site by Pat McCarthy finding little progress on applying final cover, only the presence of loads of dirt for cover piled in one corner of the site.
2. a. October 4, 1979 -- Inspection of site by Pat McCarthy finding the cover material on the site at the last inspection had not been spread on site, no progress toward final cover.
b. October 4, 1979 -- Photos of site by Pat McCarthy.
3. October 10, 1979 -- Inspection of site by Pat McCarthy finding conditions unchanged.
4. October 22, 1979 -- Inspection of site by Pat McCarthy finding same conditions as to final cover.
5. a. December 6 and 11, 1979 -- Inspection of site by Pat McCarthy finding less than five percent of the site has the required final cover as of these dates.
b. December 6 and 11, 1979 -- Sketch map of site by Pat McCarthy showing conditions as of these dates. Photos of site taken by Pat McCarthy.

Economic Savings

Noncompliance with the Board Order has resulted in considerable economic savings for the respondents. They have saved a \$2,500 installment on the imposed penalty and have failed to post a \$125,000 performance bond, which would require respondent to either post the whole amount from its own assets or pay for a surety to post the bond entailing a fee of possibly ten percent of the amount bonded. It is difficult to

estimate the amount saved by not following the final cover schedule, but the figure certainly is in the thousands of dollars. Therefore, respondents have probably saved at least ten thousand dollars by not following the Board Order.

Witnesses

1. Pat McCarthy

Witness Qualification Form is attached.

Violations and Suggested Remedy

Violations of the provisions of PCB 77-84, a violation of Section 42(a) of the Act, should be alleged for dates since the December 28, 1978 inspection date. The violations are failure to conform to the final cover schedule, failure to post the \$120,000 performance bond, and failure to pay \$2,500 of the \$5,000 penalty.

The action should be brought in the appropriate Circuit Court naming Paul Sauget, individually, and Sauget and Company as respondents. An Order should be sought from the court requiring the respondents to conform to the final cover schedule of the Board Order, post the bond, and pay the remaining \$2,500 of penalty. Also, an additional penalty should be sought for these violations of the Board Order. The amount sought should be the statutory maximum.

Addendum

Another Brochure related to this case, EPA No. 3602-B, concerning violations at this site since the issuance of PCB Order 77-84, also requests that a Circuit Court case be filed. It is suggested that the complaints in these cases be filed in Circuit Court separately and then a motion to consolidate them made.

Separate cases are required here since the current land owner, Eagle Marine Industries, cannot be held responsible for the violations of PCB Order 77-84 since it was not a party to that Order. Yet there are common parties, Paul Sauget and Sauget and Company, and common issues, conditions to the landfill, which justify bringing both cases before the same forum simultaneously.

Also, the respondents should be required to present evidence to the Circuit Court and the Agency that all burning and smoldering at the site has been extinguished before final cover is applied. An order only requiring final cover could result in burying further an underground fire, making it even more difficult to control.

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EPA No. 3602A

Attachments

1. Descriptive Material from Brochure for PCB 77-84
2. Maps of Site
3. PCB Order 77-84, August 24, 1978, incorporating proposal for settlement dated June 26, 1978
4. Inspection Reports
 - a. December 28, 1978
 - b. October 4, 1979
 - c. October 22, 1979
 - d. December 12, 1979 -- in Memo Form
5. Photos
 - a. October 4, 1979
 - b. October 22, 1979
 - c. December 6, 1979
 - d. December 11, 1979
6. Correspondence
 - a. October 16, 1979
7. Memo -- December 12, 1979
8. Sketch Maps - December 6 and 11, 1979
9. Witness Qualification Forms
 - a. Pat McCarthy

Case: ENVIRONMENTAL PROTECTION AGENCY v. PAUL SAUGET, individually,
and SAUGET AND COMPANY, a Delaware Corporation.

File #: 3602

By: Don Means

I. DESCRIPTION OF FACILITY

The facility which is the subject of this enforcement action is a refuse disposal site located near the Mississippi River in St. Clair County, Illinois (pp. 1, 11). The site is located in Centreville Township (T2N, R10W of the 3rd principal meridian) and lies partly within the limits of the Village of Sauget (p. 1). The total area of the site is approximately thirty-five acres (p. 24). Immediately to the west of the site is the Mississippi River (p. 1). A Union Electric power plant is located to the north of the site (reference: information provided by Pat McCarthy). Also to the north of the site is a dumping site for toxic chemicals operated by the Monsanto Company (reference: information provided by Pat McCarthy). The tracks of the Alton and Southern Railroad intersect the site from northeast to southwest (p. 1). To the east of the site is the levee and Gulf Mobile and Ohio railroad tracks (p. 1). This site had begun operation by at least 1967 (p. 3). The site accepted general refuse (p. 8). Cinders were used as cover (pp. 230, 272). The site was totally inundated by flood waters from the Mississippi in the spring of 1973 (pp. 134-139).

That portion of the site south of the Alton and Southern tracks was not operated after the flood (p. 260). The northern portion was permanently closed some time after August 21, 1974 (p. 284). The site currently is not in operation, nor has it received adequate final cover (p. 302). In September, 1976, a fire occurred at the site, and refuse smouldered underground for at least two weeks (pp. 301-314).

During most of the time of the operation of this site, the land was owned by Cahokia Trust Properties of Cahokia, Illinois (p. 55). On April 2, 1973, the property was sold to Notre Dame Fleeting and Towing Service, Inc., which later was merged into Eagle Marine Industries (pp. 43, 55). Eagle Marine was probably instrumental in the cessation of the unpermitted operation of this site (pp. 112, 113, 285).

The operation of the site was conducted by Sauget and Company (Sauget). Sauget is a Delaware corporation which until November 15, 1973 was authorized to do business in the State of Illinois (pp. 57 and 58). On November 15, 1973, the Secretary of State of the State of Illinois revoked the authority of Sauget to transact business in Illinois for failure to file its annual report and pay its annual franchise tax (pp. 57 and 58). Since November 15, 1973, Sauget has been doing business in Illinois without a Certificate of Authority. Paul Sauget is an officer of Sauget and Company and a principal owner (reference: information provided by Pat McCarthy). Because of his personal involvement in the operation of this facility, he should be named as an individual respondent.

II. DESCRIPTION OF POLLUTION SOURCE

The primary cause of pollution at this facility is the lack of adequate final cover. All refuse has not received at least two feet of cover as required by Rule 305(c) of Chapter 7. Additionally, the cover which has been applied is not a suitable material. Cinders have been used as cover instead of well-compacted clay or earth. As a consequence, three sorts of pollution occur:

1. Surface water infiltrates the refuse, causing the generation of leachate which migrates into the groundwater and hence into the Mississippi River.

2. When the Mississippi River is up, as in the spring of 1973, refuse is carried into the River.

3. Surface fires, such as the one which occurred in September of 1976, ignite underground refuse, causing a smouldering, smoky fire which is very difficult to extinguish.

III. PREVIOUS AGENCY INVOLVEMENT

The site was registered with the Department of Public Health on March 6, 1967 (pp. 3-5). An application for a permit was submitted to the Agency on February 7, 1972 (pp. 6-11). The application was denied on March 9, 1972 (p. 12). Another application was made on July 3, 1972 (pp. 13-28). This application was denied on August 7, 1972 (pp. 29-33). A request to reactivate the application and supplemental material were submitted to the Agency on August 1, 1974 (pp. 41-48). The application was again denied on September 16, 1974 (pp. 51-53). No further attempts to obtain a permit have been made.

Sauget was ordered by the Pollution Control Board on May 26, 1971 to pay a penalty of \$1,000 for violations in operations on a portion of the facility (PCB 71-29). Sauget was also ordered at that time to cease using cinders for cover.

The Agency has sent many letters to Sauget since it began inspecting the facility which included notification of violations observed at the site. Since April 26, 1972 many letters have advised Sauget of its failure to provide adequate final cover in required areas (pp. 60-119).

Agency personnel have spoken to Paul Sauget on several instances (pp. 112, 134, 135, 141, 290, 301, 310). On January 21, 1975, he orally agreed to the need for final cover at the site and indicated his intent to provide it (p. 290). On September 8, 1976, and September 15, 1976, he acknowledged his responsibility for the fire then burning on the site and stated that he would take corrective action (pp. 301-310).

IV. VIOLATIONS

1. (a) Chapter 7 - Rule 305(c) provides that a compacted layer of not less than two feet of suitable material shall be placed over completed portions of a landfill, not later than sixty (60) days following the final placement of refuse.

(b) Proof - Disposal operations were discontinued at the site some time before January 21, 1975 (p. 289). Under Rule 305(c), completion of final cover was required over the entire site before March 22, 1975. However, Agency inspections reveal that final cover is not yet complete (p. 311). Final cover was required even earlier

on specific areas of the site where dumping had ceased earlier (e.g., p. 140). In other words, the site has been in violation of Rule 305(c) for years. On March 8, 1974, an inspection of the site was conducted for the purpose of determining how much final cover was in place at the site (pp. 271-275). The inspection disclosed that cover varied in depth from 4" to 12" and consisted entirely of cinders (p. 272). Five photographs verify these findings (pp. 273-275). A similar inspection was conducted on January 26, 1976 (pp. 292-300). This inspection disclosed that the southern portion of the site had cover of dirt rather than cinders, but that it was only two to three inches in depth (p. 293). It also disclosed that conditions on the northern portion were similar or identical to those observed on March 8, 1974 (p. 293). Also, much refuse was observed with no cover (p. 293). Photographs were also taken during this inspection (pp. 296-300). The site was visited most recently on September 27, 1976, at which time it had not yet received adequate final cover (p. 314).

(c) Dates - From on or before March 22, 1975, to the filing of the complaint, final cover has been required over the entire site, and from even earlier on portions of the site (see proof, above).

2. (a) Chapter 3 - Rule 203(a) provides that all waters of the State shall be free from unnatural bottom deposits, oil, and floating debris, and Section 12(a) of the Environmental Protection Act provides in relevant part that no person shall cause or threaten or allow the discharge of any contaminants into the environment so as to violate regulations adopted by the Board.

(b) Proof - In the spring of 1973, the Mississippi River rose and inundated the subject site (pp. 134-228). All refuse previously deposited which had not received cover then became either a bottom deposit or floating debris in the Mississippi River. Also during this time Sauget caused refuse to be dumped into the water on the site (pp. 140, 141, 144, 146, 204, 208, 209, 235). Receding flood waters carried refuse off the site and into the main channel of the Mississippi (pp. 199, 202, 213, 223A). Refuse from the site was observed to have been carried at least two miles downstream (pp. 147-148). Many photographs were taken during this period which show debris in the water (pp. 153-175, 178-187, 189-192, 195-198, 200-202, 205-207, 214-222, 224-226, 228, 232-234). The violation of Rule 203(a) of Chapter 3 is also a violation of Section 12(a) of the Act.

(c) Dates - The initial observation of the site during the period of the flood occurred on March 26, 1973 (pp. 134, 140). Flood conditions persisted through at least May 11, 1973 (pp. 227-228) and refuse was observed in water until at least October 17, 1973 (p. 243).

3. (a) Section 12(d) of the Act provides that no person shall deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard.

(b) Proof - See proof of violation of Rule 203(a) of Chapter 3 above. Also, because of the inadequacy of final cover, there is a great hazard that leachate will be generated and will migrate into the

groundwater and into the Mississippi (see proof of violation of Rule 305(c) of Chapter 7, above).

(c) Dates - All refuse placed at this site from the effective date of the Act, July 1, 1970, until the cessation of dumping some time after August 21, 1974, was deposited in such place and manner so as to create a water pollution hazard.

4. (a) Section 9(c) of the Act provides that no person shall cause or allow the open burning of refuse.

(b) Proof - On September 8, 1976, a fire was observed on the subject site (pp. 301, 311). It had started at the north end of the site in some piles of openly dumped demolition refuse and had spread across the vegetation growing in the thin cover over the northern portion of the site (p. 311). The fire on the surface ignited the refuse underground, due in part to refuse protruding through the thin cover and in part to rat holes on this area of the site (p. 311). The site was again observed on September 9, 1976, and was still burning (pp. 302-303). Several photographs taken on September 9, 1976 show evidence of burning (pp. 304-309). The site was visited again on September 15, 1976, and on September 27, 1976, and found to be burning each time (pp. 310-314).

(c) Dates - Open burning of refuse occurred at the site from on or before September 8, 1976, until at least September 27, 1976 (pp. 301, 314).

V. AVAILABLE TECHNICAL SOLUTIONS

The best solution to the pollution problems presented by this facility is quite simple: application of final cover pursuant to Rule 305(c).

Two feet of well-compacted, relatively impermeable earthen material will protect the refuse from encroaching flood waters. Observation of the site during the 1973 flood indicated that refuse which had been covered was much less likely to be washed out and carried into the channel of the Mississippi. Also, proper cover will inhibit the formation of leachate and the ignition of underground refuse by surface fires.

The only technological difficulty that might arise at this facility is extinguishing an underground fire should it be found that such a fire continues to burn there. If so, the smouldering refuse will have to be excavated and dragged through water to ensure that the fire is totally extinguished.

The cost of these solutions is likely to be quite high, particularly in light of the shortage of cover material on the site. The field staff estimates that approximately 100,000 cubic yards of earthen material will be needed to properly cover the site pursuant to Rule 305(c) of Chapter 7. It is estimated (conservatively) that \$2.00 per cubic yard would be necessary to haul in earthen material, bringing the cost of covering to about \$200,000. In addition, the Agency will probably request that monitoring wells be installed in certain areas.

VI. WITNESS LIST

1. Pat McCarthy
Division of Land Pollution Control
Field Operations Section
Collinsville, Illinois

2. Kenneth Mensing
Division of Land Pollution Control
Field Operations Section
Collinsville, Illinois
3. Bill Child
Division of Land Pollution Control
Field Operations Section
Aurora, Illinois
4. Andy Vollmer
Division of Land Pollution Control
Springfield, Illinois
5. Michael G. Neumann
Division of Water Pollution Control
6. James Kammuehler
Division of Water Pollution Control
7. Donald Chrismore
St. Louis District
U.S. Army Corps of Engineers
8. Louis Benzek
St. Louis District
U.S. Army Corps of Engineers

(Reference may be made to pages 315-323 for qualifications of Agency witnesses).

VII. RELIEF

1. The pleadings should request the maximum penalty under Section 42 of the Act. In the event of a settlement, a penalty in the range of \$5,000-\$10,000 should be sought.

2. The Board should be requested to order that Sauget cease and desist from all violations within 60 days of the date of the Board's Order. A performance bond in the amount of \$200,000 should be obtained to ensure compliance with the Order.